

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

FS MEDICAL SUPPLIES, LLC,

Plaintiff,

v.

TANNERGAP, INC and TANNER PHARMA
UK LIMITED,

Defendants.

Case No. 3:21-cv-00501-RJC-DCK

MOTION TO DISMISS

Defendants TannerGAP, Inc. (“GAP”) and Tanner Pharma UK Limited (“Tanner UK”) move, under Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure, that this Court dismiss all claims asserted against it by Plaintiff FS Medical Supplies, LLC in its Complaint for lack of personal jurisdiction, *forum non conveniens*, and for failure to state a claim. In support of this motion, Defendants show the Court as follows:

1. FSMS asserts five claims: breach of contract, breach of the implied duty of good faith and fair dealing, money had and received, unjust enrichment, and declaratory relief.
2. The Court lacks personal jurisdiction over Tanner UK, so it should be dismissed.
3. All claims against GAP fail as a matter of law, because, as explained more fully in the Memorandum and exhibits filed with this Motion, the Complaint pleads alleged wrongful conduct and claimed injury and damage by Tanner UK only.
4. Alternatively, dismissal of this action is appropriate because the United Kingdom is a more convenient, efficient and appropriate forum to resolve this dispute.
5. If this action is litigated here, however, FSMS’s claims for money had and money received, unjust enrichment, and declaratory relief fail as a matter of law because they are duplicative of its breach of contract claims.

The grounds for this Motion are set forth in detail in the accompanying Memorandum of Law in Support of Defendants' Motion to Dismiss. In further support of their Motion, Defendants submit the Declaration of Jonathan Bracey; the Declaration of Jim Leonard; and the Declaration of John Graffin Ross, Q.C., and additional exhibits.

WHEREFORE, Defendants respectfully request that the Court grant its Motion and dismiss all of Plaintiff FS Medical Supplies, LLC's claims against Tanner GAP with prejudice, and dismiss its claims against Tanner UK without prejudice while directing that they be brought, if at all, in the Courts of the United Kingdom.

This the 6th day of December, 2021.

McGUIREWOODS LLP

By: /s/ Bradley R. Kutrow
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CERTIFICATE OF SERVICE

A copy of the foregoing was electronically filed with the Court this 6th day of December 2021, and will be served upon counsel of record via the Court's electronic filing system.

/s/ Bradley R. Kutrow
Bradley R. Kutrow